

Jay Irwin Block, Esq.  
ABATE of Maryland, Inc.  
P.O. Box 1733  
Annapolis, MD 21404

March 14, 2022

The Honorable William Smith, Jr., Chairman  
Judicial Proceedings Committee  
Miller Senate Office Building, Suite 2E  
11 Bladen Street  
Annapolis, MD 21401

**RE: SB 745**

Dear Mr. Chairman,

I am a motorcyclist and a member of ABATE. I am registered to vote in Baltimore County and in my practice as an attorney, I have travelled through all of the counties and Baltimore City for both legal and social matters, sometime in a car and sometimes on my motorcycle.

I am asking you to support the passage of the Bill, allowing motorcyclists the choice of whether to wear a helmet or not.

Regarding the above bill, I wish to address the history of "helmet" laws in the federal and Maryland governmental systems. (I use the word in quotes as the Maryland law refers to "protective headgear" without even mentioning helmets *per se*.)

Originally the states were required under federal law to mandate helmet usage. Maryland complied and established its own law. Subsequently the federal government, acknowledging it had no right to control the independence of the states in internal matters, repealed its mandate and allowed the individual states to make their own decisions as to the requirements of helmet usage.

As a result, in 1979, Maryland modified its stance, requiring helmets only for those under the age of eighteen and allowing adults to make their own decisions as to usage.

Recognizing that education as to motorcycle operation was the answer to minimizing exposure to injury both self-actuated as well as those caused by the negligence of others, ABATE of MD worked with the State of Maryland to initiate the Maryland Motorcycle Safety Program (MMSP) which taught individuals how to operate a motorcycle, how to interact with other vehicles in traffic and how to minimize injury (including reviews of all types of clothing, gloves, boots and helmets as assisting in protection from the road and weather conditions) . This program has been credited with the reduction of all kinds of injuries, not just head trauma.

The federal government then decided to reverse itself and, under the provisions of the ISTEA, The Intermodal Surface Transportation Efficiency Act of 1991, again demanded the states enact helmet laws under threat of the alleged loss of federal funding for highways. (The reality in Maryland was that all that would have happened was a redirection of funds into different programs and there would not have been any money lost.) Thus Maryland, in 1992, enacted the helmet law as it now exists. Ironically, Maryland is the only state that did so. The rest of the states demanded that their congressional representatives return to the federal government and have the penalties removed from the Act. The position of the states was acknowledged and the “hostage” provisions were removed. As a result of issues regarding the present law, the Court of Appeals in the Case of Michael Lewis vs. Ann Ferro, when questioned about the constitutionality of the Statute, as the COMAR Regulations required a list of approved headgear by the Motor Vehicle Administration, stated it was not necessary to do so as the Federal Government had provided a list in a brochure published in 1994. Since that time many listed helmets have stopped being produced and new ones have been placed on the market. It is impossible to know which helmets are now "approved" for usage. When I made a phone call to NHTSA with the 800 number provided, requesting its updated standards I was led to a series of transfers lasting over twenty minutes until I finally reach a person who told me that NHTSA did not approve helmets and could not provide information as to the propriety of any individual helmet subject to the inquiry.

Unfortunately, as this list has never been recently updated or modified under the U.S. Department of Standards, as required, motorcyclists in 2021 are relying upon articles posted on the internet such as a list prepared by the Snell Institute using its standards for approved helmets, which are different than those of the US Department of Transportation (DOT).

In the past, when a Statute was requested to require “protective headgear” for bicyclists, for all occupants, there was a resounding outcry from adults who stated they had the ability to make their own decisions regarding apparel and the law, as it stands now, is limited to those sixteen (16) and under. As bicycles have the same use of public roads (with the exception of super-highways) and can travel at speeds comparable to those of a motorcycle, it would only make sense to have the same rules for both.

ABATE’s request for a revision of the present law to only require “protective headgear” to those under 21, even though still more age-restrictive than the law as to bicyclists, would still be a step in the right direction.

Very truly yours,

/S/  
Jay Irwin Block, Esq.

CC: The Honorable Jill Carter  
The Honorable Susan Lee

The Honorable Charles Sydnor  
The Honorable Jeff Waldstreicher  
The Honorable Shelley Hettleman  
The Honorable Jack Bailey  
The Honorable Michael Hough  
The Honorable Bob Cassily  
The Honorable Chris West  
Kenneth V. Sawyer, Executive Director ABATE of Maryland